

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

WILLIS BOYD ANNIS, III,

Plaintiff

v.

JUSTIN M. CLOUSER, et al.,

Defendants

Case No.: 3:22-cv-00054-MMD-CSD

**Order**

Plaintiff is an inmate within the Douglas County Jail, and filed his civil rights complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1-1.)

The Local Rules of Practice for the District of Nevada provide: “Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed *in forma pauperis* (IFP). The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant’s income, assets, and liabilities.” LSR 1-1. When a prisoner seeks to proceed without prepaying the filing fee, in addition to filing the affidavit, the prisoner is required to submit a certified copy of the trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of the complaint. The statement must be obtained from the appropriate official at the prison or detention facility where the prisoner is or was confined. 28 U.S.C. § 1915(a)(2).

When a prisoner brings a civil action IFP, the prisoner is still required to pay the full amount of the filing fee. The court is required to assess, and when funds exist, collect an initial partial payment of 20 percent of the greater of: (A) the average monthly deposits in the prisoner’s account or (B) the average monthly balance in the prisoner’s account for the six-month period immediately preceding the filing of the complaint. Thereafter, whenever the

1 prisoner's account exceeds \$10, the prisoner must make monthly payments of 20 percent of the  
2 preceding month's income credited to the prisoners account until the filing fees are paid. The  
3 funds are to be forwarded by the agency having custody of the prisoner. 28 U.S.C. § 1915(b)(1),  
4 (2).

5 The regular filing fee is \$402, consisting of the \$350 filing fee and a \$52 administrative  
6 fee. If an inmate does not qualify for IFP status, he must pay the full \$402 filing fee. If the  
7 inmate qualifies for IFP status, the \$52 administrative fee is waived, and the inmate will only pay  
8 the \$350 filing fee over time.

9 Plaintiff has not submitted the IFP application for an inmate on the court's form, and has  
10 not provided the required financial certificate.

11 The Clerk shall **SEND** Plaintiff a copy of the instructions and application to proceed IFP  
12 for an inmate. Plaintiff has **30 days** from the date of this Order to either file his completed IFP  
13 application and financial certificate or pay the full \$402 filing fee.

14 Once Plaintiff has filed his completed IFP application and financial certificate or paid the  
15 filing fee, the court will screen the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) or 28 U.S.C.  
16 § 1915A, or both. Both require dismissal of a complaint, or any portion thereof, that is frivolous  
17 or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief  
18 against a defendant who is immune from such relief. If the complaint is dismissed on screening,  
19 there will be no refund of the filing fee, and an inmate proceeding IFP is still required to pay the  
20 \$350 filing fee over time.

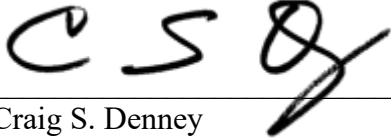
21 If, on the other hand, Plaintiff is seeking release from detention, a "habeas corpus  
22 proceeding[ ] [is] the proper mechanism for a prisoner to challenge the 'legality or duration' of  
23 confinement." *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*,

1 411 U.S. 475, 484 (1973)). If Plaintiff seeks to challenge his detention as illegal, he must notify  
2 the court and file a habeas petition and either pay the \$5 filing fee applicable to habeas actions or  
3 complete an application to proceed IFP on the court's approved form. Plaintiff shall notify the  
4 court within **30 days** if he intends to seek dismissal of this civil rights complaint and pursue a  
5 habeas action.

6 If Plaintiff fails to timely file a completed IFP application and financial certificate or pay  
7 the filing fee or notify the court that he intends to pursue a habeas action, this court will  
8 recommend dismissal of this action without prejudice.

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10 **IT IS SO ORDERED.**

11 Dated: February 28, 2022

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13 Craig S. Denney  
14 United States Magistrate Judge  
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